

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KATHLEEN BRAEGER,

Plaintiff,

vs.

Case No.
Hon.

ARMANDO DUKO, an individual,
and AVANEER DENTAL STUDIO, LLC,
a Michigan limited liability company,

DEMAND FOR JURY TRIAL

Defendant.

SCHWARTZ LAW FIRM, P.C.
By: Mary A. Mahoney (P41568)
Attorneys for Plaintiff
37887 West Twelve Mile Road, Suite A
Farmington Hills, MI 48331
(248) 553-9400
(248) 554-9107 Facsimile
mmahoney@schwartzlawfirmPC.com

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, KATHLEEN BRAEGER, by and through her attorneys, Schwartz Law Firm, P.C., and for her Complaint, states as follows:

1. This is an action arising under the provisions of the Fair Labor Standards Act of 1938, 29 U.S.C. §201, *et seq.*, and regulations promulgated thereunder and also under the Michigan Payment of Wages and Fringe Benefits Act, MCL 408.471 *et seq.*

2. Jurisdiction of the Court is invoked pursuant to 29 U.S.C. §216 and 28 U.S.C. §1331.

3. Defendants conducted business within this judicial district, and maintains a principal place of business in the City of Warren, Macomb County, within this judicial district; Plaintiff performed services for the Defendants at their place of business within this judicial district; venue is proper in this District Court pursuant to 28 U.S.C. §1391(b).

PARTIES

4. Plaintiff is the former employee of Defendant, and she performed services on behalf of the Defendant at its place of business in Warren, Michigan.

5. Defendant ARMANDO DUKO is an individual, residing in the City of Sterling Heights, County of Macomb, State of Michigan, and was at all relevant times the owner/operator of AVANEER DENTAL STUDIO, LLC.

6. Defendant AVANEER DENTAL STUDIO, LLC is a limited liability company doing business in the City of Warren, County of Macomb, State of Michigan.

FACTUAL ALLEGATIONS

7. Defendants conduct business in interstate commerce in the industry of manufacturing dental prosthetics.

8. Plaintiff was an employee of Defendants in the capacity of a dental prosthetist and performed her work for and on behalf of Defendant from her date of hire in May 2018 until the end of April 2019.

9. Plaintiff was compensated bi-weekly for her services.

10. Plaintiff was induced to return to Michigan from Arizona to work for Avaneer Dental Studio, LLC based upon a promise by Armando Duko of compensation in the form of salary based upon a rate of \$24.00 per hour, for 40 hours of work per week.

11. The salary that Plaintiff agreed to accept was based upon representations by Duko of an opportunity to earn a higher rate within a short time.

12. After she began work for Avaneer, based upon production requirements of the business, Plaintiff customarily and consistently worked 10 hours per day, although she was only paid for 8 hours per day on a salary basis.

13. Plaintiff complained to Duko repeatedly about the unpaid hours she was working but continued to work the hours in order to meet the production requirements of the business.

14. Throughout her employment, Plaintiff was Defendant's top producer of prosthetics, with a consistently higher output than the other prosthetists employed by Defendant.

15. Plaintiff punched in and out each day to document her working hours; her paychecks confirm that she was a non-exempt employee.

16. Plaintiff's primary duties as a prosthetist did not fall under any exemption pursuant to the FLSA.

17. Defendants have failed, neglected and/or refused to pay the overtime compensation owed to Plaintiff for the period May 2018 through April 2019.

18. Defendants disregarded all of Plaintiff's complaints regarding Defendants' failure to compensate her for overtime pay for her actual hours worked in violation of FLSA.

COUNT I

VIOLATION OF FAIR LABOR STANDARDS ACT OF 1938

19. Plaintiff hereby realleges and incorporates by reference her allegations contained in paragraphs 1 through 18 above, as though fully restated below.

20. Defendants are each an "employer" as such is defined in and for purposes of coverage under the Fair Labor Standards Act of 1938, 29 U.S.C. §201, *et seq* ("FLSA").

21. Plaintiff was an "employee" as such is defined in and for purposes of coverage under the FLSA.

22. Pursuant to §207 of the FLSA, Defendants were required to pay Plaintiff in an amount not less than one and one-half times the regular rate at which

she was employed for all hours worked in excess of forty (40) hours per week on behalf of the employer.

23. Defendants violated §207 of the FLSA by failing, refusing and/or neglecting to pay Plaintiff an amount at least equal one and one half times the regular rate at which she was employed for all hours worked in excess of forty (40) hours per week on behalf of the employer for the period May 2018 through April 2019.

24. The amount owed to the Plaintiff for overtime pay for the period May 2018 through April 2019 is over \$17,000.

25. Defendants' violations of FLSA as set forth herein were willful and intentional and were not remedied upon Plaintiff's complaint.

26. Pursuant to Section 216(b) of the FLSA, Defendant is liable to Plaintiff for unpaid compensation, plus liquidated damages, together with a reasonable attorney fee and costs.

27. As a direct and proximate result of the violation of the FLSA by Defendant, Plaintiff has suffered damages in the amounts set forth herein.

WHEREFORE, Plaintiff requests Judgment in her favor and against Defendants, jointly and severally, in an amount in excess of \$75,000 together with exemplary and statutory damages and her actual costs and attorney fees.

Respectfully submitted,

SCHWARTZ LAW FIRM, P.C.

By: /s/ Mary A. Mahoney
Attorney for Plaintiff
37887 West Twelve Mile Road, Suite A
Farmington Hills, Michigan 48331
(248) 553-9400
mmahoney@schwartzlawfirmpc.com
(P41568)

Dated: June 21, 2019

PLAINTIFF'S JURY DEMAND

NOW COMES Plaintiff, KATHLEEN BRAEGER, by and through her attorneys, Mary A. Mahoney and Schwartz Law Firm, P.C., and hereby requests a trial by jury of the within cause.

Respectfully submitted,

SCHWARTZ LAW FIRM, P.C.

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Attorney for Plaintiff
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Dated: June 21, 2019